No. 21567

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELDON O. HALDANE,

Appellant,

vs.

WILHELMINA HELEN KING CHAGNON et al.,

Appellee.

APPELLANT'S OPENING BRIEF

Appeal From The United States District Court
For The Southern District Of California
Central Division

Eldon O. Haldane
601 South Vermont Avenue
Los Angeles, California

Appellant in Pro Per

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STATEMENT OF PLEADING AND FACTS DISCLOSING JURISDICTION

The complaint alleges that defendant state officials and attorneys deprived plaintiff of rights, privileges and immunities secured to plaintiff by the United States Constitution, and particularly secured to him by the Civil Rights Act, 42 USC 1985 (3) and Sec. 1, Amendment 14 of the Constitution (R. 2) by seizing and imprisoning plaintiff without warrant or probable

cause (R. 3-15 incl.) denied bail (R. 5, par. 14) under pretense or pretext of an absolutely void insanity or "mental illness" (R. 10-15 inclusive) proceeding - a complete nullity on its face, by reason of which plaintiff sought damages under the Federal Civil Rights Act and other relief (R. 9).

The defendants filed motions to dismiss (R. 53, 93, 63, 22, 16, 73) which the trial court granted on the ground that the complaint fails to state a claim upon which relief can be granted (R. 111).

The district court had jurisdiction under 28 USC 1331, 1343; the Court of Appeals has jurisdiction under the provisions of 28 USC 1291 and 1294 (1). The pleadings necessary to show the existence of the jurisdictions appear at R. 2-15 inclusive and R. 111.

STATEMENT OF THE CASE

Statute

42 USC 1985 (3) provides:

> "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of

the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or

deprivation, against any one or more of the conspirators. RS. 1980."

42 USC 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

FACTS

The facts are those alleged in the complaint and summarized above under Statement of Pleadings and Facts Disclosing Jurisdiction. Haldane v. Chagnon, 345 Fed. 2d 601 erroneously decided that persons bent on defiling the Constitution and laws of the United States have an English (italicized) common law immunity to do so. Such decision is manifestly plain error and would constitute judicial repeal of the Civil Rights Acts and the Constitution itself. Neither the Constitution nor Congress adopted the common law; there was

and is no common law of the United States. Neither the President, nor Congress, nor the Courts, possesses any power not given by the Constitution (R. 116, 117, 118). We are all bound by the Civil Rights Acts and by Amendments 13, 14 and 15 which they were designed to implement. Felony is not privileged.

QUESTIONS INVOLVED

Where a complaint alleges that defendants in complicity with state officials instigated a counterfeit, sham, void "mental illness" (insanity) proceeding without any pretense of due process or equal protection (R. 3, par. 7) absent cause or probable cause, without any attempt to comply with mandatory statute, with total ignorance of the negro selected to initiate the sham proceedings as his only qualification (R. 3, par. 4) -- is a claim stated under the Civil Rights Acts?

SPECIFICATION OF ERROR

1. The trial court erred in granting defendants' motion to dismiss the complaint and in dismissing the action.
2. The trial court erred in considering Haldane v. Chagnon, 345 Fed. 2d 601 as res judicata or for any purpose. The parties are diffierent. It was NEVER considered on

the merits. The tyranny, felony and absolute despotism of the defendants has now progressed to the point of open anarchy and must be halted.

3. The trial court erred in failing to sense a massive, corrupt attack on the Constitution and laws, corruption of the Government itself. Root Refining Co. v. Universal Oil Products, 169 Fed. 2d 514, 541.

4. The trial court erred in refusing to recognize felony misconduct in the state courts requiring the exercise of the Federal courts' summary jurisdiction.

ARGUMENT

(Summary)

Appellant submits that Monroe v. Pape, 365 US 167, Mapp v. Ohio, 367 US 643, and Rochin v. California, 342 US 165, are dispositive of the instant case. The vicious, savage, degenerate acts of the defendants in full complicity with the State of California, by void, counterfeit state action, constitute grave criminal continuing offenses to be construed in pari materia with their strict or absolute civil liability.

ARGUMENT

(Extended)

That there is liability for an illegal search and seizure has been settled since Entick v. Carrington, 19 How. St. Rep. 1029 (1761). For a fascinating discussion of this case, see Boyd v. United States, 116 US 616.

Numerous cases have sustained the right of citizens to recover damages in the federal courts from state officers under facts not dissimilar from and far less aggravating than those in the instant case. For example:

Hardwick v. Hurley,
289 Fed. 2d 529;

Picking v. Penn. R. Co.,
151 Fed. 2d 240;

McShane v. Moldovan,
172 Fed. 2d 1016;

Geach v. Moynahan,
207 Fed. 2d 714;

Davis v. Turner,
197 Fed. 2d 847.

The case of Tenney v. Brandhove, 341 US 367, holds only that the Civil Rights Act does not apply to the particular conduct of state legislators involved in that case, where there was a constitutional immunity spelled out.

Indeed, the Supreme Court reaffirmed Kilbourn v. Thompson, 103 US 168, which held the Sergeant-at-Arms of the

House of Representatives liable in damages.

Moreover, in Bell v. Hood, 71 Fed. Supp. 817 the trial court said:

> "Whenever a Federal officer or agent exceeds his authority, in so doing he no longer represents the government and hence loses the protection of sovereign immunity from suit."

Similarly, in Philadelphia Co. v. Simpson, 223 US 605, 619, this Court stated:

> "The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights and property they have wrongfully invaded."

And, in Land v. Dollar, 330 US 731, this Court stated:

> "An agent or officer of the United States who acts beyond his authority is unanswerable for his action."

And, at page 738:

> "Government officials may become tort feasors by exceeding the limits of their authority."

Appellant adopts and reiterates STATEMENT OF POINTS AND ISSUES APPELLANT INTENDS TO PRESENT ON APPEAL (R. 116, line 7, and R. 117, 118). Same are incorporated herein by reference and made a part hereof.

Haldane v. Chagnon, 345 Fed. 2d 601 was wrongly decided on the theory of English common law immunity as defined by Chief Justice Kent in the New York case of Yates v. Lansing (1810), 5 Johns. 282; the cited case should be reviewed and overruled because federal Civil Rights Acts are involved.

The law of the state must yield when incompatible with federal legislation.

Gibbons v. Ogden, 9 Wheat. 1, 211. Cf. Art. VI, cl. 2, U.S. Const.

The decisions of the highest state court as to interpretations of state law are not binding on the Supreme Court when federal rights are abridged.

Greenough v. Tax Assessors,
331 U.S. 486, 497.

Federal law in patent and copyright matters prevails over state law. There cannot be read into the federal statutes and regulations that the practice of patent law must not be inconsistent with state law.

Sperry v. Florida Bar (1963),
373 US 379, 384.

Neither our Constitution nor Congress adopted the common law; there was and is no common law of the United States, conclusively shown by the controlling cases:

Wheaton v. Peters,
33 US (8 Pet.) 591;

Levy v. McCartee,
31 US (6 Pet.) 102, 110;

Swift v. Phila. & R.R. Co.,
64 Fed. 59, 61, 64;

Walker v. Globe Newspaper Co.,
130 Fed. 593, 596;

Kennedy v. Delaware Cotton Co.,
58 A. 825, 828, 4 Penn. 477;

In re Dean,
22 A. 385, 386, 83 Me. 489.

The Supreme Court held that the Civil Rights Statutes may NOT be set at naught or its benefits denied by state statutes, state common law rules, or state decisional law:

Sola Electric v. Jefferson Electric,
317 US 173, 176;

McNeese v. Board of Education (1963),
373 US 668, 671.

Plaintiff's complaint (R. 2-15 inclusive) discloses criminal violations of 18 USC 241, 242, and civil violations of 42 USC 1983, 1985 (2) (3) and 1986; considered in pari materia, the clear and present danger to plaintiff and his family is tragically apparent.

Baxtrom v. Herold, 383 US 107 (Feb. 1966) vividly illustrates the proscribed denial of Equal Protection under the Fourteenth Amendment.

The state's overwhelming involvement in the prohibited conduct is illustrated by the following cases:

Burton v. Wilmington Pkg. Auth.,
365 US 715, 725;

Shelley v. Kraemer,
334 US 1, 18.

The Supreme Court has not hesitated to overrule earlier decisions for good cause. Smith v. Allwright, 321 US 649, 665. Haldane v. Chagnon, 345 Fed. 2d 601 is clearly in this category; it is urged that any doubtful question of law be certified to the Supreme Court authority 28 USC 1254 (3) for clarification. Cf. United States v. Barnett (1964), 376 US 681. Gov. Barnett of Mississippi, Gov. Wallace of Alabama - the President, the Congress and the Courts, have been held bound and bound absolutely by the Constitution. The so-called common law immunity from its provisions is simply non-existent, because, to repeat, neither the Constitution nor the Congress has ever adopted the common law.

The perpetrator and also the instigator of false imprisonment is responsible to the victim:

Jillson v. Caprio,
181 Fed. 2d 523 (2);

Hoppe v. Klapperich,
224 Minn. 224, 28 NW2d 780, 173 ALR 819.

All the state court proceedings are tainted with fraud, felony, lack of jurisdiction of the subject matter (Bradley v. Fisher, 13 Wall. 335, 351) brutality, personal and official dishonesty, vicious unfairness, dissolving the state court's jurisdiction to enter any judgment in the pending divorce action because of denial of due process and Equal Protection by the state in the course of the proceedings. Re L.A. Pioneer Society, 217 Fed. 2d 190, 194. All state proceedings became void ab

initio because infected with felony unfairness. Entry of a final decree on Jan. 29, 1963 was a judicial act under color of State law (Katz v. Karlsson, 84 Cal. App. 2d 469 (2) 447) which purported to finalize the abduction of plaintiff's family, the destruction of all his real and personal estate. The constitutional infirmity is obvious.

COURT SHOULD APPLY THE APPROPRIATE CIVIL RIGHTS STATUTES

Baldwin v. Morgan, 251 Fed. 2d 780, 786 (24) reads as follows:

> "This is within reach of the statute and the statute as to wuch right is within the reach of the Constitution. If these facts bring into play this statute, the plaintiffs are not to be deprived of their right of attempting to prove the deprivation simply because, while 42 USC 1981 and 1983 were expressly cited in the complaint, Section 1985 (3) was not. As in Lewis v. Brautigam, 5 Cir., 227 F. 2d 124, 128, if '* * the gist of the action may be treated as one for the deprivation of such rights ** ', the Court should apply the appropriate Civil Rights Statutes, whether correctly described or not."

APPELLANT ADOPTS AND RENEWS CITATIONS OF LAW TO THE DISTRICT COURT BUT NOT CONSIDERED.

These appear at R. 73, R. 84, R. 87, R. 47, R. 80, R. 103; repetition in this brief proper would extend same unduly. Summary proceedings against attorneys is dealt with at R. 50, that Justice be undefiled.

PURPORTED PETITION (R. 10) A COMPLETE NULLITY ON ITS FACE

Same was executed by Tomlin, who had never seen plaintiff in his entire life (R. 2). Tomlin recited false hearsay. No threatening letter appears or ever appeared. Nix, state judge, had no jurisdiction to issue such a tyrannical and felonious order. No cause or probable cause appears.

Sec. 5050 of the Welf. and Inst. Code provides in relevant part:

> "If it appears to the judge from a certificate of a licensed physician and surgeon dated not more than three (3) days prior to the presentation of the petition and filed with the court, certifying that he has examined the person and is of the opinion the person is mentally ill, and because of his illness is likely to injure himself or others

if not immediately hospitalized or detained, or if it otherwise affirmatively appears that said person is likely to injure himself or others, the judge may issue and deliver to a peace officer or counselor in mental health of the county an order directing that the person be forthwith detained . . ."

No such certificate was ever produced. Actually, all the judges of all the courts of California have NO JURISDICTION to act except in conformity with Constitution and statute. Such limitation includes the appellate courts.

"Being a creature of statute, jurisdiction to enter an order of commitment pursuant thereto depends on strict complaince with each of the specific statutory prerequisites for maintenance of the proceeding . . . proceedings such as the one under consideration are purely statutory and are not based upon the common law . . . If jurisdiction is not acquired by reason of the affidavit not complying with section . . .5050, Welf. & Inst. Code, it appears that the subsequent action of the court in directing the issuance of the commitment does not give vitality to that which was void in the first instance."

In re Raner, 59 Cal.2d 635, 639, 640, 381 Pac.2d 638.

The state judicial proceeding is not immunized as against the Fourteenth Amendment. Shelley v. Kraemer, 334 US 1, 18.

ORDER FOR DETENTION (ARREST AND IMPRISONMENT) VOID

Miller, state judge, signed the order (R. 11) which is an arbitrary and groundless as any issued by the late Adolf Hitler himself. There is no compliance and no attempt to comply with the mandatory statute. The recitals therein are false. Miller necessarily knew that his bailiff Tomlin's certification was false and untrue. The principles enunciated in two recent cases that went up from the Ninth Circuit were outraged and violated:

Wong Sun et al. v. United States (1962),
371 US 471;

Robinson v. California (1961),
370 US 660.

While Miller is not a party defendant, his and Tomlin's actions rendered the so-called petition legally insufficient to vest jurisdiction in any court for any purpose (R. 5).

> "Until a conspirator affirmatively withdraws from a continuing conspiracy there is a conscious offending that prevents the statute from running."
>
> Hyde v. United States,
> 225 US 347, 348.

The complaint (R. 2-15 inclusive) discloses no such withdrawal from a malevolent continuing conspiracy to destroy appellant, his family and his property, to destroy the Constitution and the laws of the United States upon the altar of defendants' greed and vengeance. There is not one mitigating factor (R. 5, 6, 7).

APPELLANT'S ARREST WITHOUT ANY WARRANT

R. 5 alleges arrest and imprisonment without any process of any sort; the purported certificate of service was produced sometime after appellant was imprisoned; it does not reflect the truth (R. 12).

"Arrest on mere suspicion collides violently with the basic human right of liberty."

Henry v. United States,
361 US at p. 101.

APPELLANT MEDICALLY EXAMINED WITHOUT ANY JURISDICTION

R. 13, 14, reflects "not mentally ill" findings after appellant's person and property had been violated.

There is no immunity to violate the Fourth Amendment.

Hughes v. Johnson,
305 Fed. 2d 67 (9 Cir. 1962).

NONE OF DEFENDANTS OR THEIR ACCOMPLICES APPEARED TO SUPPORT THEIR KNOWINGLY FALSE CHARGES.

R. 10-15 inclusive is the "petition" in its entirety. Its instigators and accomplices incurred civil and criminal liability which is a blot upon our jurisprudence and civilation, within the purview of Windsor v. McVeigh, 93 US 274, 277.

Defendants falsely imprisoned appellant in violation of statute. Maben v. Rankin, 55 Cal. 2d 139 & Cit.

Defendants falsely procured denial of bail in violation of Constitution and In re Keddy, 105 Cal. App. 2d 215, 220, 221, 233 Pac. 2d 159.

Defendants conspired to deny plaintiff-appellant federal Constitutional due process of law and equal protection of the laws, and to violate state law as follows: Calif. Penal Code 182. Criminal conspiracy: Acts constituting: Punishment: Venue. If two or more persons conspire:

1. To commit any crime.

3. Falsely to move or maintain any suit, action or proceeding.

4. To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses . . .

5. To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due

United States v. Guest,
16 L. Ed. 2d 239, 86 S. Ct. ___ (1966),
383 US 745.

United States v. Price,
86 S. Ct. 1152, 383 US 787 (1966).

Amendment 14 clearly denounces denial of any trial at all to accused. United States v. Price, supra. All the proceedings in the Haldane matter were equivalent to no trial at all.

COURT OF APPEALS MAY ORDER DRASTIC ENFORCEMENT OF CIVIL RIGHTS, PAYMENT OF PLAINTIFF'S ATTORNEY FEES.

Lance v. Plummer, 353 Fed. 2d 585, cert. den. 1966, 16 L. Ed. 2d 532 .

NO ATTORNEY OR STATE OFFICER OF ANY GRADE HAS IMMUNITY TO COMMIT FELONY OR VIOLATE CONSTITUTION AND LAWS:

United States v. Manton, 107 Fed. 2d 834;

Root Refining Co. v. Universal Oil Products,
169 Fed. 2d 514, 541;

Re Craig,
12 Cal. 2d 93.

ARREST ORDER CANNOT BE BASED UPON HEARSAY, NOR UPON ANY STATEMENT, HOWEVER POSITIVE, WHICH IS FOUNDED UPON HEARSAY:

Neves v. Costa, 5 Cal. App. 111 (Cited with approval in Singleton v. Perry, 45 Cal. 2d 489, 494);

Collins v. Jones, 131 Cal. App. 747;

Re Hofmann, 131 Cal. App. 2d 758-762.

It is urged that the Court of Appeals act exactly as though it were the Supreme Court of the United States, order summary, injunctive and pecuniary relief under Sec. 1, Fourteenth Amendment, proscribing certain state action or action by those acting in complicity with state officials, and under the provision of the appropriate Civil Rights Acts (Bell v. Hood, 327 US 678, 681, 682, 684) to restore Due Process and Equal Protection to the state courts in Los Angeles County, Calif., where anarchy has taken over. The Constitution and laws of the United States are the real proponents before the Court.

The judgment should be REVERSED; 345 Fed. 2d 601 should be overruled.

Respectfully submitted,

/s/ Eldon O. Haldane
ELDON O. HALDANE

Appellant in Pro Per

CERTIFICATION

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Eldon O. Haldane

ELDON O. HALDANE

Appellant in Pro Per